



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>CHARLES TURNER, JR.,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	<b>Charge No.: 2000CN2671</b>
<b>and</b>	)	<b>EEOC No.: N/A</b>
	)	<b>ALS No.: 11669</b>
<b>TOTAL MAINTENANCE FACILITY,</b>	)	
	)	
<b>Respondent.</b>	)	

**RECOMMENDED ORDER AND DECISION**

On December 6, 2001, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Charles Turner, Jr. That complaint alleged that Respondent, Total Maintenance Facility, discriminated against Complainant on the basis of his arrest record when it discharged him.

A public hearing on the allegations of the complaint was scheduled for January 14, 2004. Prior to that scheduled hearing, the parties engaged in settlement discussions. Those discussions resulted in a verbal agreement to resolve this matter. Despite the results of the settlement discussions, Respondent has failed to take any steps to comply with the terms of the settlement. As a result, Complainant filed a motion to enforce the agreement. That motion was granted and Complainant was given leave to file a motion for sanctions.

This matter now comes on to be heard on Complainant's Motion for Attorney's Fees Regarding Settlement Agreement. Respondent has not filed any response to said motion. The matter is ready for decision.

**FINDINGS OF FACT**

The following facts were derived from the record file in this case.

1. The parties voluntarily participated in settlement discussions on January 14, 2004. Those discussions were conducted with the assistance of Administrative Law Judge Michael J. Evans. Both parties were represented by counsel during said discussions.

2. During the January 14 settlement discussions, Complainant agreed to dismiss this matter in exchange for a payment of \$7,000.00.

3. Respondent has made no attempt to comply with the terms of its agreement with Complainant and his counsel has not answered inquiries from Complainant's attorney.

4. On April 22, 2004, pursuant to Complainant's Motion to Enforce Settlement Agreement, Administrative Law Judge Michael J. Evans entered an order requiring Respondent to comply with the settlement agreement on or before May 20, 2004. That order also stated that, if Respondent failed to comply, Complainant would be given leave to file a motion for attorney's fees.

5. Respondent did not comply with the April 22 order.

6. Complainant is seeking compensation for the work of attorney Anthony L. Schumann at the rate of \$275.00 per hour for 5.3 hours.

7. The requested hourly rate is reasonable and should be accepted.

8. The requested number of hours is reasonable and should be accepted.

9. On January 6, 2004, Administrative Law Judge David J. Brent entered an order that ordered that Respondent's counsel, the Law Firm of E. Duke McNeil & Associates, pay \$4,042.50 to Complainant's counsel, Anthony L. Schumann, Ltd., as a sanction for behavior that unreasonably delayed proceedings in this matter.

10. The parties' settlement agreement did not address the sanctions ordered by Judge Brent. Instead, the parties contemplated that Respondent's counsel would ask Judge Brent to reconsider his January 6 order.

11. On February 5, 2004, Respondent's counsel failed to appear to argue the motion

to reconsider. No explanation was offered for that failure to appear. In light of the unexplained failure to appear, Judge Brent entered an order that denied Respondent's motion with prejudice.

### CONCLUSIONS OF LAW

1. The parties entered into a binding oral settlement agreement.
2. The Human Rights Commission has authority to enforce an oral settlement agreement.
3. The Human Rights Commission has authority to sanction an attorney or a party for conduct that unreasonably delays proceedings.
4. Respondent's refusal to comply with the terms of the oral settlement agreement has unreasonably delayed the proceedings in this matter.
5. Judge Brent's January 6, 2004 order in this matter should be enforced and is incorporated by reference into this Recommended Order and Decision.

### DISCUSSION

This matter comes on to be heard on Complainant's Motion for Attorney's Fees Regarding Settlement Agreement. The facts regarding the motion are not in dispute. Respondent has not appeared to dispute them. As has been the case throughout this litigation, Respondent and its counsel have disregarded orders and deadlines and have unreasonably delayed proceedings. Such contumacious behavior must have consequences.

Before addressing the merits of Complainant's instant motion, there is another matter that should be addressed. On January 6, 2004, before the parties entered into settlement discussions, Administrative Law Judge David J. Brent entered an order that required Respondent's counsel, the Law Firm of E. Duke McNeil & Associates, to pay \$4,042.50 to Complainant's counsel, Anthony L. Schumann, Ltd., as a sanction for behavior which unreasonably delayed proceedings in this matter.

On January 14, 2004, the parties voluntarily participated in settlement discussions. Those discussions were conducted with the assistance of Administrative Law Judge Michael J. Evans. Both parties were represented by counsel during said discussions. During the January 14 settlement discussions, Complainant agreed to dismiss this matter in exchange for a payment of \$7,000.00.

The parties' settlement agreement did not address the sanctions ordered by Judge Brent. Instead, the parties contemplated that Respondent's counsel would ask Judge Brent to reconsider his January 6 order. When Respondent's counsel failed to appear on the motion to reconsider, Judge Brent entered his February 5 order that denied with prejudice Respondent's motion to reconsider his sanctions order. As a result, Judge Brent's January 6 sanctions order should be enforced and it is incorporated by reference.

With that matter resolved, the discussion can turn to the pending motion. Complainant states that he and Respondent entered into a binding oral settlement agreement. He further states that Respondent has failed to fulfill its responsibilities under that agreement. He seeks to have the settlement agreement enforced. He also seeks payment of the attorney's fees he had to incur to enforce the agreement.

Despite receiving proper service of Complainant's motion and Commission orders regarding that motion, Respondent has failed to offer any response. Either Respondent does not accept the Commission's authority to act in this situation or it does not care if the motion is granted. Whatever the reason for Respondent's inaction, it is clear that Complainant's motion should be granted.

The Human Rights Commission clearly has the authority to enforce oral settlement agreements. See, e.g., **Arshall and Ford Motor Co.**, \_\_\_ Ill. HRC Rep. \_\_\_, (1995CF3339, March 17, 1998). Moreover, the Commission has in the past awarded attorney's fees in situations where one party unreasonably failed to honor such an agreement. See **Watkins and**

***State of Illinois, Dep't of Corrections***, \_\_\_ Ill. HRC Rep. \_\_\_, (1990CF1303, June 2, 1999); ***Stewart and Olin Corporation***, \_\_\_ Ill. HRC Rep. \_\_\_, (1994SA0154, August 4, 1998). Those precedents should be followed in this situation.

Respondent agreed to pay Complainant \$7,000.00 to resolve this matter. In light of that agreement, Respondent should be ordered to pay that amount to Complainant. Such an order merely implements the meeting of the minds reached by the parties themselves.

In this situation, though, the Commission also should order a sanction for the failure to follow through on the settlement agreement. Since the settlement agreement was reached, Complainant's counsel has made several attempts to contact Respondent's counsel to implement the parties' agreement. Respondent's counsel has not responded to those attempts.

Complainant's counsel has done everything he could reasonably be expected to do. After he failed to resolve the matter directly, he sought the Commission's help. On April 22, 2004, Administrative Law Judge Michael J. Evans entered an order that ordered Respondent to pay \$7,000.00 to Complainant by May 20, 2004. That order also stated that, if Respondent failed to comply, Complainant would be given leave to file a motion for fees.

Respondent failed to respond to the April 22 order. Respondent also failed to appear for scheduled status hearings on May 20, and June 17, 2004. Clearly, Respondent was given notice that it was required to comply with the terms of the settlement agreement and that failure to comply would subject it to sanctions in the form of attorney's fees. Despite that notice, Respondent did nothing. As a result of that behavior, Respondent should be ordered to pay Complainant's reasonable attorney's fees.

The procedure for determining reasonable attorney's fees is explained in the case of ***Clark and Champaign National Bank***, 4 Ill. HRC Rep. 193 (1982). Under ***Clark***, Complainant first must establish that the hourly rate he seeks is appropriate. Then, he must establish the number of hours reasonably expended.

Complainant's motion includes documentation to support the fees he seeks. There was no response from Respondent. By failing to address Complainant's request for fees, Respondent has waived the issue of such fees. See *Mazzamuro and Titan Security, Ltd.*, \_\_\_ Ill. HRC Rep. \_\_\_, (1989CN3464, October 21, 1991).

Even without that waiver, though, it would be recommended that Complainant receive the fees he seeks. Complainant is seeking compensation for the work of attorney Anthony L. Schumann at the rate of \$275.00 per hour for 5.3 hours. The requested hourly rate is not excessive and the requested hours appear to be reasonable.

Multiplying the requested rate by the requested number of hours results in a total of \$1,457.50. That is the recommended attorney's fee award.

#### RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding the following relief:

A. That Respondent's counsel, the Law Firm of E. Duke McNeil & Associates, pay \$4,042.50 to Complainant's counsel, Anthony L. Schumann, Ltd., as a sanction for behavior which unreasonably delayed proceedings in this matter;

B. That Respondent pay to Complainant the sum of \$7,000.00 as promised in the parties' oral settlement agreement;

C. That Respondent pay to Complainant the sum of \$1,457.50 as attorney's fees reasonably incurred in Complainant's attempts to enforce the parties' oral settlement agreement.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: January 18, 2005